

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10657 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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GIGABHAI P VIRAS

Versus

G S R T C

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Appearance:

MR HK RATHOD for Petitioner

MR HS MUNSHAW for Respondents

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 21/02/97

ORAL JUDGEMENT

The petitioner was working as a conductor at Una depot of Amreli district since more than five years and on 14.1.1993, he petitioner was taken on time scale in the post of conductor after he had completed service as a

daily wager. The petitioner during the course of employment was sent by the respondent authority for medical examination before the Civil Surgeon, Civil Hospital, Amreli who certified that the petitioner was suffering from cancer of cell carcinoma on right ear. The petitioner was therefore declared unfit for the post of conductor and for the post of helper as a result of which the service of the petitioner came to be terminated vide order dated 10.4.1995 on the basis of the medical certificate dated 22.12.1994 issued by Civil Surgeon at Amreli.

The petitioner thereafter submitted an application to the respondent on 20.10.1994 with a request to recategorise him from the post of conductor to that of helper for which the petitioner is declared fit by the Civil Hospital which came to be rejected by the central office of the respondent-Corporation.

The petitioner, therefore, by filing this petition, has inter alia contended that the termination order is contrary to the principles of natural justice and violative of provisions of the settlement dated 26.2.1971, Schedule II, item No. 2 (K). It is, therefore, the case of the petitioner that he is entitled to recategorisation for the post of helper .

According to the further case of the petitioner, he is subsequently found cured from the said disease by Shardaben Hospital, Ahmedabad and he is now fit to work as a conductor. It is in this context that he has filed this petition questioning the order of his termination on the ground of medical unfitness.

The respondent-Corporation has appeared and resisted the petition by filing an affidavit inter alia contending that as per the settlement and regulations for re-categorisation, the case of the petitioner is not falling within the said protection. Only in certain cases, certain types of employees are considered eligible for categorisation as per the settlement. The respondent Corporation has also placed reliance on circulars Nos. 547 dated 25.2.1995 and No. 448 dated 20.1.1996.

Learned Advocate for the petitioner has placed reliance on the decision of the Honourable Supreme court in Narendra Kumar Chandla vs. State of Haryana, AIR 1995 SC 519. In that case, the employee while working as sub-station attendant unfortunately had to be operated for cancer and ever since he was treated in Tata Memorial Hospital at Bombay upto 18.3.1985. Thereafter, the

employee was discharged and his right arm was completely amputated due to the said Sarcoma. It was a cancer effect but it was arrested. The doctor also recommended that the employee could assume his normal duties. The employer had absorbed him as carrier attendant instead of sub-station attendant. Feeling dissatisfied, the employee approached the High court challenging the order of the employer which came to be rejected. However, the Honourable Supreme court allowed the appeal. The pertinent observations made by the apex court are in para 7 of the said decision which are as follows :

"Article 21 protects the right to livelihood as an integral facet of right to life. When an employer is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties as a carrier attendant is unjust. Since he is a matriculate, he is eligible for the post of L.D.C. For L.D.C., apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct the respondent Board to relax his passing of typing test and to appoint him as a L.D.C. Admittedly, on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs. 1400-2300. Necessarily, therefore, his last drawn pay has to be protected. Since he has been rehabilitated in the post of L.D.C., we direct the respondent to appoint him to the post of L.D.C. protecting his scale of pay of Rs. 1400-2300 and direct to pay all the arrears of salary."

After having considered the aforesaid facts and circumstances, the terms and conditions of the settlement and the circulars relied on by the respondent-Corporation and in light of the relevant legal settled proposition, it will be just and expedient to direct the petitioner workman to make a representation to the Managing Director of the respondent-Corporation who will consider and decide his representation sympathetically. It will also be open to the Managing Director to get the petitioner medically examined and verified as to whether he is fit for work and for what type of work.

The learned advocate for the petitioner states that representation will be submitted within a period of two weeks from today. The Managing Director of the respondent-Corporation will decide the representation within a period of six weeks from the date of receipt of the representation, even if need be, as a special case since the petitioner is in 30s and had contended to be fit for resumption of work. Ofcourse, it will be open for the Managing Director to get him examined through medical experts.

In view of the aforesaid direction to the petitioner to make a representation, no further order is required to be passed . Therefore, this petition stands disposed of at this stage. Rule discharged with no order as to costs.

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